

## 48A C.J.S. Judges § 341

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### E. Effect of Disqualification of Judge

## § 341. Disposition of case

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

**A case brought before a disqualified judge should not be dismissed but should be transferred to another court or judge.**

A suit or proceeding brought before a disqualified judge should not be dismissed.<sup>1</sup> The law which prescribes the disposition that is to be made of the case or proceeding, or the course to be pursued when a judge is found to be disqualified to hear or try it, may and must be followed.<sup>2</sup> In accordance with the governing statute, the cause should be transferred to another court or judge,<sup>3</sup> or another judge should be called in<sup>4</sup> after having been selected in the manner provided by law.<sup>5</sup>

### ***Bringing suit in another court.***

Where the judge of one court is disqualified, a suit or proceeding is properly brought in another court having jurisdiction,<sup>6</sup> without any previous designation by the disqualified judge.<sup>7</sup> Under such circumstances, the existence of the disqualification must be made plainly to appear,<sup>8</sup> but a complaint need not set forth the fact of disqualification.<sup>9</sup>

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

<sup>1</sup> Ohio—*Rawson v. Boughton*, 5 Ohio 328, 1832 WL 10 (1832).

Tex.—*Smith v. Harden*, 68 Tex. 120, 3 S.W. 453 (1887).

**Judge should not act pending resolution of motion**

- W. Va.—Shenandoah Sales & Service, Inc. v. Assessor of Jefferson County, 228 W. Va. 762, 724 S.E.2d 733 (2012).
- 2 Ariz.—In re Monaghan's Estate, 60 Ariz. 346, 137 P.2d 390 (1943).
- Ky.—Stanley v. McCormack, 237 S.W.2d 535 (Ky. 1951).
- Mo.—State ex rel. Nickerson v. Rose, 351 Mo. 1198, 175 S.W.2d 768 (1943).
- 3 Cal.—Frisk v. Superior Court, 200 Cal. App. 4th 402, 132 Cal. Rptr. 3d 602 (4th Dist. 2011), as modified on denial of reh'g, (Nov. 23, 2011).
- Mo.—State v. Rosegrant, 338 Mo. 1153, 93 S.W.2d 961 (1936).
- N.J.—State v. McCabe, 201 N.J. 34, 987 A.2d 567 (2010).
- Wash.—Skagit County v. Waldal, 163 Wash. App. 284, 261 P.3d 164 (Div. 1 2011).
- 4 Ariz.—In re Monaghan's Estate, 60 Ariz. 346, 137 P.2d 390 (1943).
- Ga.—Jordan v. State, 172 Ga. 857, 159 S.E. 235 (1931).
- Mont.—Rowan v. Gazette Printing Co., 69 Mont. 170, 220 P. 1104 (1923).
- 5 La.—State ex rel. Hunter v. Judges of Ninth and Seventeenth Judicial Dists., 29 La. Ann. 785, 1877 WL 8030 (1877).
- As to mode and manner of selecting special or substitute judge, see §§ 354 to 363.
- 6 Ala.—Hooks v. Barnett's Ex'r, 38 Ala. 607, 1863 WL 391 (1863).
- Ind.—Pavy v. Ramsey, 14 Ind. 5, 1859 WL 4829 (1859).
- 7 Ga.—Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).
- 8 Ga.—Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).
- 9 Ala.—Hooks v. Barnett's Ex'r, 38 Ala. 607, 1863 WL 391 (1863).

---

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.